Court No.2

Civil Misc. Writ Petition No. 3186 (M/S) of 2001
(Old No. 12128 of 1986)

Naresh Chandra Garg ……. Petitioner.

Versus

The Additional District Magistrate
/Prescribed Authority (Rent Control)
Nainital & Five others. ……..Respondent

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Hon'ble P.C.Verma, J.

This petition has been filed by the Petitioner challenging the order dated 29th July, 1986 passed by Additional District Magistrate/ Prescribed Authority (Rent Control & Eviction Officer). Nainital, declaring the vacancy under Section 12 of U.P.Act No. XIII of 1972. The order of the Prescribed Authority is based on the report of the Inspector who reported that the premises is vacant on the ground that Shyam Sunder had constructed his own house and he is not occupying the premises.

According to the petitioner, the order is bad as the Prescribed Authority did not take into account the fact that Shyam Sunder was not the tenant, the petitioner was tenant from the year 1973 and he wa not given any opportunity to pur forward this version before the Prescribed Authority, therefore, the release order was passed. In order to substantiate this contention, the learned counsel for the petitioner filed certified copy of the judgment dated 31.5.1989 passed in Civil Suit No.01 of 1985 and the judgment of the Civil Judge (Judge Small Cause Court) in S.C.C. Suit No. 18 of 1988.

wherein both the courts have held that the petitioner was tenant in his own right from 1973.

Learned counsel for the petitioner Submits that because the impugned order was passed In exparte proceedings therefore, he has filed Certified copies of these judgments before this Court in the writ petition, so that the correctness of the order may be appreciated. The Original Suit No. 1 of 1985 was between Naresh Chandra Garg and the Additional District Magistrate/Prescribed Authority, Nainital and others, in which the Respondent/landlord is not a party, but since the Court has recorded a categorical finding that the Petitioner is tenant in his own right, the said judgment ahs evidentiary value in view of Sec. 33 of the Indian Evidence Act. In the second suit (S.C.C. Suit No. 18 of 1988), which was filed against Shyam Sunder, the petitioner was substituted after his death, a categorical finding has been recorded Between the parties as under:-

> “PRASTUT VAAD VADINI DWARA VARSH 1988 ME SANSTHIT KIYA GAYA HAI THATHA VARSH 1988 ME SWARGIYA SRI SHYAM SUNDER KA VAADGRAST SAMPATTI PAR KIRAYEDAR KER OOP ME ADHYASIT HONA KISI PRAKAR PRATEET NAHIN HOTA HAI TATHA AISI STHITHI ME YAHA SPSHTA HAI KI PRASTUT VAAD DAYAR KARTE SAMAYA MOOL PRATIVAADI SRI SHYAM SUNDER GARG VAADGRAST SAMATTI KA KIRAYEDAR NAHIN THA”.

This finding has been recorded between The parties themselves and has not been set aside Therefore binds the parties as these findings have Never been challenged by the respondents anywhere.

Refuting the contention raised by the learned counsel for the petitioner, the learned counsel for the respondents invited the attention of the Court on Clause-9 of the sale deed, which shows that at the time of execution of sale deed Shyam Sunder was in possession. This is the Statement given by the vendor in sale deed which cannot be given weight over the finding recorded by a court in the judicial proceeding.

Learned counsel for the respondents further Invited the attention of the court on para-2 of the writ petition, which reads as under:-

> “That the father of the petitioner alongwith the petitioner was a joint tenant of the prem-ises in dispute upto June 1973. Rent receipts were given by the landlord showing the name of Shyam Sunder , father of the petitioner, as well as the name of Naresh Chandra , petitioner. True copies of the receipt issued by Thakur Keshar Singh on behalf of the Proprietor, Woldrof Hotel Are bing filed herewith as Annexures ‘1’, ‘2’, ‘3’, and ‘4’,.”

From the reading of above, it is clear That the petitioner ha stated that he was joint Tenant only upto the year 1973, meaning thereby The finding recorded by the Civil Judge in Original Suit No.1 of 1985 that after 1973 the petitioner Became the tenant in his own right is further Supported. Therefore, the statement made in Para-2 Of the writ petition does not help the respondent In any manner.

Rent Control & Eviction Officer. As noticed above, since it comes out from the evidence on record of this writ petition that at the relevant time shyam Sunder was not the tenant of the building in dispute, therefore, in my opinion, it is a fit case in which the Rent Control & Eviction Officer should be directed to pass a fresh order under Section 12 of U.P.Act No. XIII of 1972 taking into account the evidence brought on record in this writ petition. Therefore, the impugned order dated 29th July, 1986 is hereby quashed and the Prescribed Authority (Rent Control & Eviction Officer), Nainital is directed to Pass a fresh order under Section 12 of U.P.Act No. XIII of 1972 considering all these evidence on Record within a period of three months from the date Of receipt of certified copy of this order, after Giving opportunity of hearing to the petitioner and the respondents.

However, it is made clear that the facts Noticed in the body of the judgment will not be Treated to be a finding recorded by this Court.

(P.C.Verma, J.)

04.12.2001
P.Singh